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No. 97-42

# In the Supreme Court of the United States

OCTOBER TERM, 1997

EASTERN ENTERPRISES, PETITIONER

*v.*

KENNETH S. APFEL,
COMMISSIONER OF SOCIAL SECURITY, ET AL.

*ON WRIT OF CERTIORARI*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE FIRST CIRCUIT*

## BRIEF FOR THE FEDERAL RESPONDENT

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## QUESTION PRESENTED

Whether the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9701 *et seq.*, as applied to petitioner, violates the Due Process Clause or the Just Compensation Clause of the Fifth Amendment.

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## BRIEF FOR THE FEDERAL RESPONDENT

## OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A23) is reported at 110 F.3d 150. The opinion of the district court granting summary judgment in favor of respondents (Pet. App. A25-A27) is unreported. An earlier opinion of the district court denying petitioner's motion for summary judgment and denying third-party defendant Peabody Holding Company's motion to dismiss (Pet. App. A28-A38) is reported at 942 F. Supp. 684.

## JURISDICTION

The judgment of the court of appeals was entered on April 7, 1997. The petition for a writ of certiorari was filed on July 3, 1997, and was granted on October 20, 1997. 118 S. Ct. 334. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides, in relevant part: "[N]or [shall any person] be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9701 *et seq.*, is set forth in relevant part at Pet. App. A39-A64.

## STATEMENT

1. The Coal Industry Retiree Health Benefit Act of 1992 (Coal Act or Act), 26 U.S.C. 9701 *et seq.*, was enacted in response to a crisis in health care costs in the coal industry. The Act had its origins in a series of collective bargaining agreements between coal mine operators and the United Mine Workers of America (UMWA). Those contracts, known as National Bituminous Coal Wage Agreements (NBCWAs), created multi-employer benefit plans that for more than 40 years provided health care benefits to active and retired miners and to their dependents. The Coal Act was enacted to preserve the health benefits that had been available to retired coal miners and their dependents before the Act was passed. See Pet. App. A3.

The health care benefits of coal miners, their dependents, and their survivors have been a central issue in labor relations in the coal industry for many years, and the federal government played a formative role in the postwar settlement of that issue. Immediately after World War II, the UMWA made creation of a health and retirement fund a cornerstone of its collective bargaining demands. After unsuccessful negotiations over health and retirement benefits led to a nationwide coal strike in 1946, the federal



government nationalized the coal industry. The government and the UMWA subsequently executed at the White House a contract, known as the Krug-Lewis Agreement, which established a "Medical and Hospital Fund" for health benefits for miners and their dependents, to be administered by union-appointed trustees. See *United States* v. *United Mine Workers*, 330 U.S. 258, 262-263, 286 (1947). The Krug-Lewis Agreement also committed the federal government to undertaking a "comprehensive survey and study" of medical facilities available to coal miners, in order to "determine the character and scope of improvements which should be made to provide the mine workers of the Nation with medical * * * facilities conforming to recognized American standards."[1]

That study, known as the Boone Commission Report, disclosed "many serious deficiencies in the lives of the people employed in bituminous-coal mining," and emphasized that "corrective action [was] more imperative than ever before." U.S. Coal Mines Admin., *A Medical Survey of the Bituminous-Coal Industry* ix (1947). The Report found that, in coal-mining areas, rates of infant mortality were significantly above those in other areas, *id.* at 76-77; that measures to control and cure tuberculosis in coal-mining areas were insufficient, *id.* at 80; that local and state public health services were not reaching coal-mining

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[1] See *Coal Commission Report on Health Benefits of Retired Coal Miners: Hearing Before the Subcomm. on Medicare and Long-Term Care of the Senate Comm. on Finance*, 102d Cong., 1st Sess. 80-82 (1991) (reprinting Krug-Lewis Agreement) (hereafter *Senate Coal Commission Hearing*); J. Woodrum & L. Rothman, *Proposals for Funding United Mine Workers of America Retiree Health Benefits: The Constitutional Dimensions*, 93 W. Va. L. Rev. 633, 639-640 (1991); J.A. 262a-263a (Coal Commission Report); Staff of House Comm. on Ways and Means, 103d Cong., 1st Sess., *Financing UMWA Coal Miner "Orphan Retiree" Health Benefits* 101-102 (Comm. Print 1993) (hereafter *Financing Orphan Retiree Benefits*).

communities, *id.* at 86, 88; that "there has not been a comprehensive program, or even any program at all for rehabilitating the disabled within the bituminous-coal industry," *id.* at 112; that physicians had failed to employ measures to prevent occupational diseases in miners, *id.* at 114; that at a majority of the mines, medical facilities "range[d] from adequate to very poor," *id.* at 130-131; and that three-fourths of hospital facilities available to miners and their families were inadequate with regard to at least one major function, such as "[s]urgical rooms, delivery rooms, labor rooms and nurseries, clinical laboratories, and X-ray facilities," *id.* at 191. The Boone Commission Report recommended that a system based on sound actuarial principles be established "to provide comprehensive medical services to coal-mine employees and their dependents." *Id.* at 227.[2]

In 1947, after the mines were returned to private control, the UMWA and the Bituminous Coal Operators Association (BCOA) entered into a NBCWA, which created a multi-employer health and welfare fund covering both pension and health benefits, financed by employer contributions based on coal production, and administered by three trustees. Continued disagreement and labor unrest over financing of benefits,[3] however, led to another strike and to the appointment of Senator Styles Bridges as the neutral trustee of the health and welfare fund in an effort

[2] Examining the history of miners' health care benefits in 1990, the Secretary of Labor's Advisory Commission on United Mine Workers of America Retiree Health Benefits (Coal Commission) observed that the Boone Commission Report's recommendation "provided a road map for the newly created [multi-employer] [f]und to begin the process of reform." J.A. 264a; see also *Senate Coal Commission Hearing* 297 (statement of UMWA President Richard Trumka that "[t]he Boone report became a guiding force and a touchstone for the UMWA funds").

[3] See *NLRB* v. *Amax Coal Co.*, 453 U.S. 322, 332 n.14 (1981).



to settle the parties' differences.[4] The labor unrest was eventually resolved in 1950 when a new NBCWA put into place the essence of the postwar structure for miners' health benefits. In return for significant concessions by the union in other areas, including mechanization of coal mining operations, the members of the BCOA agreed to finance health benefits to be administered by a new multi-employer trust, the United Mine Workers of America Welfare and Retirement Fund (1950 W&R Fund), and to give full cooperation to the trust in the development of its policies and in its operations. The 1950 W&R Fund was governed by three trustees (one appointed by employers, one by the union, and a neutral trustee). The trustees were given broad discretion in setting miners' health benefits, and with a few brief exceptions (which generated labor unrest), they provided retired coal miners with lifetime health benefits.[5]

An important aspect of the structure of health benefits established by the 1950 NBCWA was that financing the benefits of retired miners was the responsibility of the entire unionized coal industry. The multi-employer nature of the benefits structure was essential to its success-

[4] See *Senate Coal Commission Hearing* 297 (statement of UMWA President Trumka); *Financing Orphan Retiree Benefits* 103-104; J.A. 264a.

[5] See Woodrum & Rothman, *supra*, 93 W.Va. L. Rev. at 640-641; *In re Chateaugay Corp.*, 53 F.3d 478, 481 (2d Cir.), cert. denied, 116 S. Ct. 298 (1995); *Davon, Inc.* v. *Shalala*, 75 F.3d 1114, 1124 (7th Cir.), cert. denied, 117 S. Ct. 50 (1996); J.A. 265a-267a (Coal Commission Report, noting that union-employer "concordat" led to a period of labor-management peace, but that occasional retrenchment of benefits in 1960s by trustees led to wildcat strikes); see also J.A. 270a (noting that "first ever reduction of medical benefits resulted in a massive unauthorized work stoppage during the summer of 1977"), 271a (noting that failure to reach agreement over health benefits was major cause of 111-day strike in 1977).

ful functioning because the forms of business organizations in the coal industry change frequently. "As an extractive industry dealing with nonrenewable resource, the coal industry is inherently subject to the closing of mining establishments. At some point, the supply of coal that can be mined at a particular location, at an acceptable cost, will be exhausted, and mining operations at that site will cease. Some coal companies may go out of business entirely. As part of a physical relocation, the company name or corporate identity of the coal operator may change; so may the type of mining."[6]

The 1950 NBCWA provided the basic benefits format for wage agreements until 1974, when demographic changes and the passage of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, led to a restructuring of the health and retirement benefits fund. In response to ERISA's new funding requirements for pension plans, the 1974 NBCWA divided the 1950 W&R Fund into four multi-employer trusts, two of which—known as the 1950 UMWA Benefit Trust (1950 Trust) and

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[6] *Financing Orphan Retiree Benefits* 34; see also *Senate Coal Commission Hearing* 15, 21 (testimony of Prof. Henry Perritt) (observing that coal operations were frequently conducted by entities limited to "a particular physical mine" and by "subsidiaries that are here today and gone tomorrow," and that because of this volatility, a multi-employer plan was necessary to prevent "a situation in which there are going to be people who are deprived of their promised benefits"); *Provisions Relating to the Health Benefits of Retired Coal Miners: Hearing Before the House Comm. on Ways and Means*, 103d Cong., 1st Sess. 19 (1993) (statement of Assistant Sec'y of Labor John Donahue) (noting that the coal industry is "generally structured as holding companies that control numerous subsidiary operations," that subsidiaries are sometimes "created to protect their controlling interests from liability," and that "[t]he use of thinly capitalized subsidiaries has sometimes permitted segments of the coal industry to avoid having to pay for health benefits promised through the collective bargaining process") (hereafter *1993 House Hearing*).



the 1974 UMWA Benefit Trust (1974 Trust)—financed medical benefits.[7] See *UMWA Health & Retirement Funds* v. *Robinson*, 455 U.S. 562, 566 (1982). The 1950 Trust was set up to provide health care benefits *only* to miners who had retired before January 1, 1976 (and their dependents), including those miners who had worked for corporate entities that had signed a previous NBCWA but had ceased operations. See J.A. 276a, 289a. The 1974 Trust provided benefits to active miners, to miners who retired after January 1, 1976, and to their dependents. The 1974 NBCWA promised that covered retired miners would retain health benefits for life. Pet. App. A4; see also *In re Chateaugay Corp.*, 53 F.3d 478, 482 (2d Cir.) (quoting 1974 Agreement's provision that "[a]ny pensioned miner covered in this Plan will retain his Health Services card until death, and upon his death his widow will retain a Health Services card until her death or remarriage"), cert. denied, 116 S. Ct. 298 (1995); *Robinson*, 455 U.S. at 566 & n.5.

Another adjustment to retired miners' medical benefits was made by the 1978 NBCWA, which altered the operation of the 1974 Trust. The 1978 NBCWA shifted responsibility for active miners and miners who retired after 1975 to single-employer plans maintained by individual operators who employed those miners. J.A. 271a. The 1974 Trust was restricted to providing health care benefits for "orphaned" retired miners, *i.e.*, retirees whose last employer had gone out of business or otherwise ceased contributing to the Trusts. See J.A. 277a. The 1978 NBCWA also expressly obligated signatories to make sufficient contributions to maintain benefits due under the 1950 and 1974 Trusts (the "guarantee" clause) and to continue to contribute as long as the operator remained in business (the "evergreen" clause), whether or not the operator

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[7] The other two trusts covered pension benefits for miners, and are not at issue in this case.

signed an agreement subsequent to the 1978 NBCWA. See J.A. 301a-303a; Staff of House Comm. on Ways and Means, 103d Cong., 1st Sess., *Financing UMWA Coal Miner "Orphan Retiree" Health Benefits* 5, 16-21 (Comm. Print 1993) (hereafter *Financing Orphan Retiree Benefits*).

2. In the 1980s, the system for financing health care for retired miners faced a crisis. Some of the causes of that crisis were rooted in broad economic forces, such as the national increases in health-care costs, increased mechanization leading to decline in numbers of miners employed, and shifts in coal production away from the bituminous coal extraction in the Eastern United States, which had been the principal subject of the series of NBCWAs, to surface mining in the West, which was largely not covered by those multi-employer collective bargaining agreements or their arrangements for retirees' benefits. See J.A. 255a-256a, 287a-288a; *Financing Orphan Retiree Benefits* 33-36, 42. The crisis was also caused in significant part, however, by the increasingly severe problem of "orphan" retirees, *i.e.*, retirees whose employers had withdrawn from the system of financing their benefits when they failed to sign successor NBCWAs or ceased coal operations.[8] Litigation had also established that the 1974 Trust was legally responsible for the benefits of those retired miners whose employers ceased operations or declined to sign a NBCWA even after the 1978 NBCWA made individual employers responsible for the health benefits of their own employees.[9] Thus, by

[8] See J.A. 289a (Coal Commission Report noting that, as of 1989, about half of the beneficiaries of the 1950 Trust worked for employers who were no longer in operation or no longer contributing); *Financing Orphan Retiree Benefits* 32 (Congressional Research Service estimate that 72% of beneficiaries of 1950 Trust were orphans).

[9] *Financing Orphan Retiree Benefits* 16, 49-50; see *District 29, United Mine Workers of America* v. *UMWA 1974 Benefit Plan and*



withdrawing from the industry-wide agreements, operators were able to shift the cost of their retired miners' benefits to the remaining coal companies that contributed to the Trusts, and the Trusts became responsible for funding increasingly expensive benefits for increasing numbers of retirees, even while the funding base—the number of coal mines still in production covered by the NBCWA—was decreasing. By 1990, the 1950 and 1974 Trusts had incurred a combined deficit of over $110 million. See J.A. 288a-289a, 291a-293a.

After a lengthy strike at the Pittston Coal Company (which refused to sign the 1988 NBCWA and ceased contributing to the Trusts), in which health benefits were a major issue, the Secretary of Labor established the Advisory Commission on United Mine Workers of America Retiree Health Benefits (Coal Commission) to assess the financial prospects of the 1950 and 1974 Trusts and to make recommendations for their long-term stability. The Coal Commission reached consensus on several issues related to the future of the Trusts. Most significantly, the Commission found that "[r]etired coal miners have legitimate expectations of health care benefits for life; that was the promise they received during their working lives and that is how they planned their retirement years." J.A. 245a-247a; see also J.A. 236a ("Health care benefits are an emotional subject in the coal industry, not only because coal miners have been promised and guaranteed health care benefits for life, but also because coal miners in their labor contracts have traded lower pensions over the years for better health care benefits."), 237a (Commission "firmly believe[d] that the retired miners [were] entitled

*Trust*, 826 F.2d 280 (4th Cir. 1987), cert. denied, 485 U.S. 935 (1988); *United Mine Workers of America* v. *Nobel*, 720 F. Supp. 1169 (W.D. Pa. 1989), aff'd, 902 F.2d 1558 (3d Cir. 1990), cert. denied, 499 U.S. 904 (1991).

to the health care benefits that were promised and guaranteed them and that such commitments must be honored"), 340a (Commission agreed that "[t]he health care delivery system should be designed to honor the expectations of coal miners, based on commitments made under the terms of the various [NBCWAs]"). The Commission's members also agreed that collective bargaining could not resolve the Trusts' financial difficulties, and that at a minimum "a statutory obligation to contribute to the plans should be imposed on current and former signatories to the [NBCWA]." J.A. 237a.

The principal issue on which the Commission's members did not reach agreement was whether the entire coal industry—including operators who had never signed any NBCWA or employed miners who had obtained benefits under the Trusts—should contribute toward the cost of resolving the problem of orphan retirees. J.A. 237a. The Commission therefore proposed two alternative funding plans for Congress's consideration. First, the Commission proposed a two-part plan, in which the benefits of orphan retirees would be financed by an industry-wide fee, while the benefits of other retirees whose employers were still in business would be financed by the signatories to the 1978 and subsequent NBCWAs. J.A. 307a. As an alternative funding plan, the Commission proposed no industry-wide fee or tax, but recommended seeking "additional revenues from a broadened base of current and past signatories to [the NBCWAs]," including a "reachback" to former signatories. J.A. 312a, 314a.[10] Underlying both of the Commission's proposals was the likelihood that a financing plan that rested solely on contributions from signatories to the 1978 and subsequent NBCWAs would be insufficient to restore the Trusts to solvency.[11]

[10] Although, as petitioner notes (Br. 12), the members of the Commission agreed on the need to impose contributions on past signatories "possibly reaching back to the signatory class of 1978" in the first plan, J.A. 304a, the alternative funding plan specified no cut-off date.



3. The Commission's report and recommendations were the subject of extensive consideration in Congress. At a hearing held to consider the Commission's proposals, a Senate subcommittee heard testimony and received evidence from supporters of the Coal Commission's recommendations that congressional action was necessary to "honor[] commitments to retirees" who had been promised lifetime health care benefits from the 1940s onward.[12] On

[11] See *Financing Orphan Retiree Benefits* 24-27 (reviewing evidence on this point); Staff of House Comm. on Ways and Means, 104th Cong., 1st Sess., *Development and Implementation of the Coal Industry Retiree Health Benefit Act of 1992*, at 57-60 (1995) (same); General Accounting Office, *Employee Benefits: Financing Health Benefits of Coal Industry Retirees* 10-11 (July 1992) (similar).

[12] See *Senate Coal Commission Hearing* 10 (testimony of Prof. Perritt), 43-45 (testimony of Michael Reilly, Chairman of BCOA, that under current trends 120,000 "coal miner retirees will not receive the benefits they were promised"), 48 (Reilly testimony that some coal operators remained parties to later NBCWAs because "I think we do have a moral obligation to the funds"), 301 (written response of UMWA President Richard Trumka to question by Sen. Boren, stating that issue before Congress is "how to continue to provide benefits to 120,000 elderly Americans who were promised lifetime health benefits"), 304, 306 (statement of Coal Commission Chairman W.J. Usery) (noting argument that "coal companies have a historical obligation, based on collective agreements negotiated 45 years ago, to pay for those benefits," and suggesting that coal companies and workers need assistance of Congress "to fulfill the promises that began in the collective bargaining process nearly 50 years ago in the White House"); see also *id.* at 16 (statement of Sen. Durenberger) (noting that question for Congress was whether to honor "a whole bunch of promises made to a whole lot of people back in the 1940s and 1950s when the cost consequences of those problems were totally unknown"), 59 (statement of Sen. Hatch) (125,000 miners and their families "were led to believe by their own union leaders and the companies for which they worked that they were guaranteed lifetime benefits").

the floor of the Senate, supporters of a legislative solution stressed that miners had been promised lifetime health benefits when the miners and the coal operators had made a "deal" in the 1940s, exchanging mechanization of the mines for a promise of "good health care in [the miners'] twilight years," and that legislation was "needed to see to it that the deal is honored."[13] Supporters of the Coal Commission Report also emphasized to Congress that coal operators that had withdrawn from the system of financing benefits had, in effect, "dumped" their retirees onto the remaining operators who were parties to the later NBCWAs, creating a "Last Man's Club" in which those operators had been forced to pay for the orphan retirees' benefits.[14] They also strongly urged the point that resolution of the benefits issue was fundamental to labor peace in the coal industry.[15]

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[13] 138 Cong. Rec. S10,783 (daily ed. July 29, 1992) (statement of Sen. Rockefeller); see also *ibid*. (statement of Sen. Byrd, that purpose of legislation is "to assure tens of thousands of retired coal miners * * * that promises made to them during their working years are not now * * * going to be reneged upon"); *id*. at S10,785 (statement of Sen. Ford, expressing appreciation that "a promise made to [the retirees] can be kept"); *id*. at S10,785-S10,786 (statement of Sen. Wofford, similar); *id*. at S17,603 (daily ed. Oct. 8, 1992) (Conference Report on Coal Act, stating that "[u]nder those agreements [the NBCWAs], retirees and their dependents have been promised lifetime health care benefits," and that legislation would assure retirees and their eligible dependents "of receiving the lifetime benefits promised under the collective bargaining agreements").

[14] See *Senate Coal Commission Hearing* 18 (Prof. Perritt, discussing "dumping"), 43-45 (testimony of Michael Reilly, discussing obligation of remaining parties to NBCWA to pay for "dumped" retirees), 46-47 (testimony of Robert Dufek, discussing "dumping"), 47, 50-51 (testimony of UMWA President Richard Trumka; similar).

[15] *Senate Coal Commission Hearing* 19 (testimony of Prof. Perritt, that collapse of benefits structure "would produce economic conflict, because this particular issue has produced economic conflict in the coal



Both Houses originally passed a modified version of the Coal Commission's first funding proposal, as part of an omnibus economic stimulus package; that legislation would have required signatories to the 1978 or any subsequent NBCWA to pay for their own retired miners' health care costs, and would have financed orphan retirees' benefits through a tax on future bituminous coal production.[16] See H.R. Conf. Rep. No. 461, 102d Cong., 2d Sess. 268-296 (1992). The President vetoed that bill, however, because it contained tax increases. See H.R. Doc. No. 206, 102d Cong., 2d Sess. 1 (1992). Moreover, the industry-wide tax on coal production was widely perceived as unfair because it forced coal producers that had never signed any of the NBCWAs and thus had not contributed to the problems facing the Trusts to pay for the solution.[17] As a result,

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fields in the past"), 40 (testimony of UMWA President Richard Trumka, that "consequences of nonaction may well be a ruinous confrontation at the expiration of the current [NBCWA]"), 306 (statement of Chairman Usery, that failure to resolve benefits issue "creates a potential for serious conflict that could affect, not only the signatory operators, but the entire U.S. coal industry," and urging legislators to "[i]magine the bitterness and strife that might follow if over 100,000 retirees from every state in the country were left without benefits which they believed were theirs for life").

[16] The legislative history of the Coal Act is reviewed at *Financing Orphan Retiree Benefits* 52-56.

[17] See *Financing Orphan Retiree Benefits* 50-51; see also *1993 House Hearing* 8-9 (testimony of Ass't Treasury Sec'y for Tax Policy Samuels, noting that coal tax "generally has been viewed * * * as forcing Western coal producers * * * to subsidize Eastern coal producers that employed a majority of the retirees being provided health benefits"); *id*. at 32 (similar; written answers submitted by Ass't Labor Sec'y Donahue); *Senate Coal Commission Hearing* 22-24; 138 Cong. Rec. S17,603 (daily ed. Oct. 8, 1992) (statement of Sen. Wallop); *ibid*. (final Conference Report, summarizing evolution of Coal Act, and rejecting "highly controversial" coal tax under which "those companies with no relationship to the UMWA or BCOA were to be taxed to sub-

Congress enacted a modified version of the Coal Commission's alternative funding plan, which became the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act), Pub. L. No. 102-486, Tit. XIX, Subtit. C, 106 Stat. 3036 (now codified at 26 U.S.C. 9701 *et seq.*). It is that funding plan that is under challenge in this case.

4. The Coal Act was intended "to remedy problems with the provision and funding of health care benefits * * * to the beneficiaries of [coal industry] multiemployer benefit plans," to ensure "sufficient operating assets" for such plans, and "to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans." Coal Act § 19142(b)(1)-(3), 106 Stat. 3037, 26 U.S.C. 9701 note. Congress found that, to secure the stability of interstate commerce, it was necessary to modify the coal industry's existing system for funding retiree health benefits "to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health benefits to * * * retirees." Coal Act § 19142(a)(2), 106 Stat. 3037, 26 U.S.C. 9701 note.

To achieve those purposes, the Coal Act comprehensively restructured the provision of health benefits to retired miners and their dependents by, among other things, merging the 1950 and 1974 Trusts into a new private multi-employer plan known as the United Mine Workers of America Combined Benefit Fund (Combined Fund). See 26 U.S.C. 9702(a)(1)-(2).[18] As is relevant here, the Combined Fund provides "substantially the same"

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sidize the BCOA's private promises," in favor of "an equitable solution [that] would require that such companies remain obligated to help fund the benefit program which covered retired persons who worked for those companies").

[18] The Coal Act also established another fund, the 1992 UMWA Benefit Plan, which is not at issue here. See 26 U.S.C. 9712.



health benefits as were available under the 1950 and 1974 Trusts to retirees and their dependents who were "eligible to receive, and receiving" benefits from the Trusts as of July 20, 1992. See 26 U.S.C. 9703(b)(1) and (f); see generally 26 U.S.C. 9703(a)-(f). The Combined Fund thus has a closed class of beneficiaries, the membership of which will diminish over time.

Benefits paid through the Combined Fund are financed through annual premiums. Those premiums must be paid by "signatory coal operators," *i.e.*, coal operators that either signed a national coal wage agreement between the UMWA and the BCOA or made contributions under related "me-too" wage agreements. See 26 U.S.C. 9701(b)(1) and (3), 9701(c)(1). The Coal Act bases the amount of premiums on the principles that each signatory operator should bear the cost of providing benefits to its own retirees, if possible, and that all signatories should share proportionally in the cost of providing benefits to orphaned retirees whose former employers had gone out of business entirely.[19] As is pertinent to this case, premium obligations are imposed on any signatory operator that "remains in business," 26 U.S.C. 9706(a), with "business" defined by the Act to include "conduct[ing] or deriv[ing] revenue from any business activity, whether or not in the coal industry," 26 U.S.C. 9701(c)(7). The premium obligations of a signatory coal operator that has ceased all business

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[19] The Act authorized the transfer to the Combined Fund of $210 million in surplus funds accumulated by the 1950 UMWA Pension Plan, as well as amounts from the Abandoned Mine Reclamation Fund, to mitigate coal companies' liability for unassigned beneficiaries. See 26 U.S.C. 9705(a) and (b); 30 U.S.C. 1232(h). Thus far, those transfers have been sufficient to cover benefits for true "orphan" beneficiaries. See *Chateaugay*, 53 F.3d at 486. Accordingly, this case presents no question concerning former signatories' obligation to contribute toward the cost of health-care benefits of true orphan retirees; it involves only petitioner's obligation to pay for its own retirees' benefits.

activity may be imposed on a "related person" to that signatory operator (such as a corporate affiliate or individual partner)[30] that "remains in business" within the meaning of the Act. 26 U.S.C. 9706(a).

The Coal Act directs the Commissioner of Social Security to match beneficiaries of the Combined Fund with the signatory operator responsible for paying their health care benefits. 26 U.S.C. 9706(a). The Act sets forth a three-tiered formula for matching miners to coal operators, which attempts to place primary responsibility for financing health care benefits on those signatory operators that signed NBCWAs in 1978 or afterwards. The Commissioner is first directed to assign a miner to the coal operator that signed a national wage agreement in 1978 or later and that most recently employed the miner for at least two years (or to any "related person"). 26 U.S.C. 9706(a)(1). If no operator meets both criteria, then the miner is assigned to the operator that signed a national wage agreement in 1978 or later and that most recently employed the miner (or to any "related person"). 26 U.S.C. 9706(a)(2). Finally, if none of the miner's employers that signed a national wage agreement in or after 1978 (or any "related person") remains in existence, then that miner is assigned to the pre-1978 signatory that employed him for the longest period before 1978. 26 U.S.C. 9706(a)(3). See generally 20 C.F.R., Pt. 422.

5. Petitioner mined coal in West Virginia, Pennsylvania, and Kentucky from 1946 to 1965, and was a signatory

[30] The term "related person" includes "a member of the controlled group of corporations * * * which includes such signatory operator"; "a trade or business which is under common control * * * with such signatory operator"; anyone with "a partnership interest or joint venture with a signatory operator" that employed eligible beneficiaries; and "a successor in interest of" any of the above. 26 U.S.C. 9701(c)(2)(A).



to the national wage agreements during that period. Pet. App. A6. At the end of 1965, petitioner created a wholly owned subsidiary, Eastern Associated Coal Company (EACC), and carried out mining operations through the subsidiary. *Id.* at A6-A7. EACC was a signatory to the 1974, 1978, and 1988 agreements that expressly guaranteed lifetime benefits to all eligible miners and dependents. *Id.* at A7; Pet. Br. 6-7. In 1987, petitioner sold EACC to Peabody Holding Company. *Ibid.*

The Commissioner of Social Security assigned to petitioner premium responsibilities for miners who worked for the company before 1966 and their dependents, based on petitioner's status under the Coal Act as the pre-1978 signatory operator for whom the assigned miners had worked for the longest period. Pet. App. A6. Petitioner filed suit in district court, alleging that the Coal Act, as applied to it, violates the Due Process Clause and Just Compensation Clause of the Fifth Amendment, and also challenging on statutory grounds the Commissioner's interpretation of the Coal Act to require it to pay for those miners' benefits. The district court upheld the Commissioner's interpretation of the Coal Act, *id.* at A28-A35, and also upheld the constitutionality of the Act's funding obligations under the Due Process Clause and the Just Compensation Clause, *id.* at A25-A27.

6. a. The court of appeals affirmed. Pet. App. A1-A23. Addressing first petitioner's due process challenge to the Coal Act, the court stressed that the Act is "entitled to the most deferential level of judicial scrutiny," and that, "[w]here, as here, a piece of legislation is purely economic and does not abridge fundamental rights, a challenger must show that the legislature acted in an arbitrary and irrational way." *Id.* at A10 (internal quotation marks omitted). The court also observed that, even though the Coal Act imposes retroactive liability on companies like

petitioner, the Act is nonetheless subject to review only under the rational-basis standard. *Id.* at A11-A12. "As long as the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means," the court explained, "judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches." *Ibid.* (internal quotation marks omitted).

Applying that rational-basis standard, the court upheld the application of the Coal Act to petitioner. The court first held that Congress's purpose in enacting the Coal Act—to resolve persistent problems of labor unrest by ensuring that multi-employer coal retiree benefit plans are adequately funded—was legitimate. Pet. App. A12. The court then rejected petitioner's argument that the Act irrationally assigns miners to companies, such as petitioner, that left the coal industry before 1974 and did not expressly obligate themselves in later NBCWAs to provide lifetime health benefits. *Id.* at A12-A13. The court stressed that petitioner, by signing the pre-1974 NBCWAs, had contributed to miners' legitimate expectations of lifetime health benefits. *Id.* at A13. The court also noted that the Act "actually takes some pains to shield companies like [petitioner]," which ceased direct involvement in coal mining operations before 1974, from disproportionate liability by directing the assignment of retired miners first to any nondefunct coal mining company that employed them after 1978. *Id.* at A15. And it observed that the Coal Act's system is in many respects more rational than an alternative scheme suggested by petitioner, which would impose all the costs of retired miners' health care on post-1974 coal operators, because such a scheme would require that the premiums necessary to fund health benefits for many retired miners be paid by companies that had never employed them. *Id.* at A16 n.5.



b. The court analyzed petitioner's taking claim by applying the three factors identified by this Court in *Connolly* v. *Pension Benefit Guaranty Corp.*, 475 U.S. 211, 224-225 (1986), as having "particular significance" to such a claim: "(1) the economic impact of the regulation on the claimant, (2) the extent to which the regulation interferes with the claimant's reasonable investment-backed expectations, and (3) the nature of the governmental action." Pet. App. A20 (internal quotation marks omitted).

As for the economic impact of the Coal Act on petitioner, the court first noted that this case "does not involve the total deprivation of an asset." Pet. App. A20. The court then concluded that the Act's impact on petitioner "reflects a sufficient degree of proportionality" because petitioner will be assigned to pay for miners' medical benefits only when no post-1978 NBCWA signatory (or related person) can be found, and because petitioner will be liable only for those individuals "whom it employed for a relevant (and relatively long) period of time." *Id.* at A20-A21. With regard to the second *Connolly* factor, petitioner's investment-backed expectations, the court rejected petitioner's argument that it could have had no expectation that it would be made liable for its retirees' health benefits. *Id.* at A22. In light of the pattern of federal intervention in (and regulation of) the coal industry and petitioner's own role in fostering miners' expectation of lifetime benefits, the court reasoned, petitioner "had every reason to anticipate that it might be called upon to bear some of the financial burden that this expectation [of lifetime health benefits] engendered." *Ibid.*

The court further found that the nature of the government action under the Coal Act lends support for the Act's constitutionality. Pet. App. A22-A23. The Act, noted the court, does not require physical invasion or permanent appropriation of petitioner's property, but rather "adjusts

the benefits and burdens of economic life to promote the common good." See *id.* at A22 (quoting *Connolly*, 475 U.S. at 225). Further, the funds collected are disbursed to a private benefit fund (the Combined Fund), not a government entity. *Id.* at A23. Thus, the court concluded, "there is no basis whatever for [petitioner's claim] that the statute transgresses the Takings Clause." *Ibid.*

## SUMMARY OF ARGUMENT

The Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9701 *et seq.*, establishes a comprehensive, privately funded regime for providing health benefits for retired union miners and their dependents, with the costs to be borne in large part by the coal operators that signed national multi-employer wage agreements (NBCWAs) establishing a predecessor retirement benefits program, and employed the retired miners. The Act creates a three-tiered system for assigning current beneficiaries to signatory operators based on, *inter alia*, the wage agreements that the operator signed and the miner's length of service with that employer. That mechanism for financing health-care benefits comports with both the Due Process Clause and the Just Compensation Clause.

I. Economic legislation challenged as a violation of substantive due process is subject only to minimal and highly deferential scrutiny under the rational-basis standard. The deference accorded such legislation is no less applicable when that legislation is applied retroactively. Retroactive legislation, including cost-spreading legislation of the nature that is at issue here, will be upheld as long as it is rationally designed to accomplish a legitimate purpose. *Pension Benefit Guaranty Corp.* v. *R.A. Gray & Co.*, 467 U.S. 717, 729 (1984); *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976).

The Coal Act was intended to prevent disruption of interstate commerce by addressing a source of serious



instability in the coal industry, the inadequate funding of retired miners' health benefits; that end was plainly legitimate. The Act accomplished its objective of ensuring adequate funding for those benefits by placing primary funding responsibility on the miners' former employers. That approach was permissible. After reviewing the conclusions of an advisory commission established by the Secretary of Labor to examine the crisis in the coal industry and make recommendations for its solution, and after receiving testimony and evidence submitted both for and against the Coal Commission's recommendations, Congress determined that retired miners, their survivors and their dependents had a legitimate expectation of continued health benefits, based on implicit or explicit promises made to the miners during the experience of the multi-employer benefit plans. Congress also received evidence that mine operators that had withdrawn from that multi-employer system had effectively shifted the costs of funding their retirees' benefits to other operators, who had remained in the system. Congress therefore reasonably determined that the former employers who were responsible for the miners' legitimate expectations should be responsible for financing the fulfillment of those expectations. And after examining several options for solving the health-care crisis in the coal industry, Congress chose the funding mechanism in the Coal Act because it was concerned about the effectiveness and fairness of other approaches that had been suggested.

Although petitioner argues that Congress erred in basing the Act on those judgments and that evidence, this Court's precedents do not permit petitioner to prevail by "proving" that it did not cause the funding crisis that the Act was designed to address. Congress's judgment that all signatories to the NBCWAs did play a role in the ultimate funding crisis "is not subject to courtroom factfinding."

*FCC* v. *Beach Communications, Inc.*, 508 U.S. 307, 315 (1993). Nor can petitioner establish a due process violation by attempting to show that Congress's assumptions underlying the Coal Act fail in petitioner's particular case. The question is not whether the statute precisely filters out only those fitting the fact pattern that caused congressional concern, but rather, whether Congress had a rational basis for its judgments. See *Weinberger* v. *Salfi*, 422 U.S. 749, 777 (1975).

II. Petitioner's claim under the Just Compensation Clause likewise fails. The Coal Act satisfies the standard this Court has set forth in *Concrete Pipe & Products of California, Inc.* v. *Construction Laborers Pension Trust for Southern California*, 508 U.S. 602 (1993), and *Connolly* v. *Pension Benefit Guaranty Corp.*, 475 U.S. 211 (1986), for assessing whether a governmental regulation effects an uncompensated taking of property. Although petitioner urges the Court to review the Coal Act as though it caused a physical invasion of petitioner's property, the Court in *Concrete Pipe* and *Connolly* rejected a similar argument. Petitioner also errs in suggesting that a taking occurs unless there is a direct causal connection between the problem addressed by the legislation and the property burdened under it. A nexus test originating in the doctrine of unconstitutional conditions has been applied by the Court in cases involving government requirements that landowners grant easements, but it is limited to government-compelled dedications taking away the right to exclude others from the use of property, and is inapplicable to economic regulation of the sort at issue here.

The Coal Act satisfies the three-part test of *Concrete Pipe* and *Connolly*. First, because the Coal Act is economic regulation adjusting private burdens and benefits in society and does not involve a physical occupation of



petitioner's property, it does not have the character of a classic taking. Second, petitioner has failed to show that the economic impact of the Act on it is out of proportion to its experience, for petitioner has been assigned responsibility only for those miners that it formerly employed, and for their dependents (and indeed only if no later employer of those miners or related entity is available to shoulder that responsibility), based on its participation in a system that created a legitimate expectation that those persons would receive health-care benefits. Third, the Act does not interfere with petitioner's reasonable investment-backed expectations, in light of the extensive history of federal involvement in and regulation of the coal industry and multi-employer benefit plans generally, as well as petitioner's particular expectation that it would benefit from the participation in the coal industry of its subsidiary (to which it shifted its coal operations), including that subsidiary's participation in the NBCWA system. Thus, Congress reasonably concluded that operators like petitioner should bear the cost of financing the health-care benefits of their own retirees, who had a legitimate expectation of receiving those benefits from the multi-employer system in which those operators participated, and that those costs did not have to be borne by the public at large.

## ARGUMENT

### I. THE COAL ACT IS RATIONAL ECONOMIC LEGISLATION CONSISTENT WITH THE SUBSTANTIVE REQUIREMENTS OF THE DUE PROCESS CLAUSE

A. To demonstrate that the Coal Act violates the substantive requirements of the Due Process Clause for economic legislation, petitioner must traverse "unusually inhospitable legal terrain." *In re Chateaugay Corp.*, 53 F.3d 478, 487 (2d Cir.), cert. denied, 116 S. Ct. 298 (1995). Petitioner must show that the Act cannot survive a standard of review that is among the most deferential in constitutional jurisprudence, for "[t]he day is gone when this Court uses the Due Process Clause * * * to strike down * * * laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought." *Williamson* v. *Lee Optical*, 348 U.S. 483, 488 (1955). "It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it." *Ibid.*

As a "legislative Act[] adjusting the burdens and benefits of economic life," the Coal Act enjoys a strong "presumption of constitutionality," and the "burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976); see also *Concrete Pipe & Products of California, Inc.* v. *Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 637-639 (1993). If the statute "is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches[.]" *Pension Benefit Guaranty Corp.* v. *R.A. Gray & Co.*, 467 U.S. 717, 729 (1984).



Congress has "absolutely no obligation to select the scheme that a court later would find to be the fairest, but simply one that was rational and not arbitrary." *National R.R. Passenger Corp.* v. *Atchison, T. & S.F. Ry.*, 470 U.S. 451, 477 (1985). Nor is Congress required to tailor a statute regulating economic activity narrowly and precisely to achieve its objectives. *Turner Elkhorn*, 428 U.S. at 18-19. To the contrary, a statute like the Coal Act "need not be in every respect logically consistent with its aims to be constitutional." *Williamson*, 348 U.S. at 487-488. Indeed, it may be sustained on any "conceivable" rational basis, even one not expressly adverted to by Congress or contemplated at the time of passage. See *Heller* v. *Doe*, 509 U.S. 312, 320-321 (1993); *FCC* v. *Beach Communications, Inc.*, 508 U.S. 307, 314-315 (1993).

Nor is a more stringent standard of review applicable to the Coal Act on the ground that the Act is said to have a retroactive effect. The Court has made clear that "the strong deference accorded legislation in the field of national economic policy is no less applicable when that legislation is applied retroactively." *R.A. Gray*, 467 U.S. at 729. Even when a statute has retroactive effect, the Due Process Clause is satisfied as long as "the retroactive application of the legislation is itself justified by a rational legislative purpose." *Id.* at 730.

Moreover, contrary to petitioner's contention (Br. 19, 24), this Court has not limited its approval of retroactive legislation to circumstances in which a short period of retroactivity was necessary to "cure" mistakes in prior legislation. The Due Process Clause gives legislatures broad discretion in adjusting economic rights and duties, and the "vague contours" of due process do not prescribe limits on a legislature's authority to make retroactive

adjustments any more than they dictate other line-drawing decisions that enter into the drafting of economic legislation. See *Ferguson* v. *Skrupa*, 372 U.S. 726, 731 (1963). Thus, the Court has upheld retroactive civil legislation enacted to allocate litigation costs fairly among classes of litigants, *United States* v. *Sperry Corp.*, 493 U.S. 52 (1989); to give previously injured workers the benefits of an improved workers' compensation law, *General Motors Corp.* v. *Romein*, 503 U.S. 181 (1992); and to enable disabled coal miners suffering from an occupational disease with a long latency period to recover disability benefits from their employers even though their employment terminated before the legislation's enactment, *Turner Elkhorn*, *supra*. See also H. Krent, *The Puzzling Boundary Between Criminal and Civil Retroactive Lawmaking*, 84 Geo. L.J. 2143, 2156 (1996) (citing cases and statutes).[21]

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[21] While this Court has noted that Congress's practice in the tax field has been to confine retroactive application to "short and limited periods," *United States* v. *Darusmont*, 449 U.S. 292, 296-297 (1981) (per curiam), none of this Court's decisions suggests that due process compels that practice. And although the Court has suggested that "beyond some temporal point" retroactive laws may offend due process, *McKesson Corp.* v. *Division of Alcoholic Beverages & Tobacco, Dep't of Business Regulation*, 496 U.S. 18, 40 n.23 (1990), it has never established an absolute temporal limit to the retroactive application of legislation. Moreover, Congress's self-imposed custom with regard to tax legislation, which is intended to fund current government operations and is therefore ordinarily prospective, is not necessarily applicable to civil regulatory legislation. Many problems outside the tax area, such as black lung disease and hazardous waste, may exist, though latent, for a long time and may impose massive social costs before they are recognized as a proper subject for legislation; and even once the legislation to address them is enacted, further passage of time may yield new information that exposes inadequacies in prior law. Similarly here, the long-term contractual relationship among operators and the UMWA under the NBCWAs makes it appropriate for legislation



Petitioner is likewise incorrect in suggesting (Br. 35) that due process requires a "tight causal nexus" between the conduct of a party subject to economic regulation and the harm addressed by the statute. Even when Congress legislates retroactively, it is not limited to regulating those entities that most directly caused the problem that is addressed by remedial legislation. Such a test would inappropriately restrict Congress's ability to legislate in any area where it is difficult to determine precisely who "caused" the problem, and to what degree. Due process requires only that Congress's judgment as to who should bear the costs of a program be *rational*. It is sufficient if Congress "legislate[s] retrospectively to ensure that costs of a program are borne by the entire class of persons that Congress rationally believes should bear them." *Sperry*, 493 U.S. at 65.[22]

Thus, Congress has wide latitude to spread the costs of a remedy across an industry, rather than select only those specific participants who "caused" the need for remedial legislation. In fact, *Turner Elkhorn*—which petitioner cites as the source of its causation requirement (Br. 23-24)—made clear that, had it chosen to do so, Congress could

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that responds to the cumulative consequences of that relationship to take account of events over a period of years. The Due Process Clause does not impose any particular time limit on legislatures' authority to respond in such circumstances, but requires only that the response be rational.

[22] Petitioner's insistence that due process requires a close causal nexus is particularly odd in light of its assertion that the Coal Act assessment is a tax (Br. 25 n.40). No decision of this Court suggests that Congress may impose taxes only on those who "caused" the need for the tax. See, *e.g.*, *Carmichael* v. *Southern Coal & Coke Co.*, 301 U.S. 495, 521-522 (1937) ("Nothing is more familiar in taxation than the imposition of a tax upon a class or upon individuals who enjoy no direct benefit from its expenditure, and who are not responsible for the condition to be remedied.").

have allocated the costs of providing benefits to miners disabled by black lung disease to new industry participants or even participants who took measures to protect miners from occupational risk of incurring the disease. 428 U.S. at 18. The Court stressed that it was for Congress to determine whether to impose the burden of inactive miners' disabilities on all operators (including those just mentioned who bore no direct responsibility for the disabilities), or instead to impose the burden on "those who have profited from the fruits of their labor"—*e.g.*, early operators "whose profits may have increased at the expense of their employees' health." *Ibid.* In sustaining the approach Congress ultimately chose, the Court found it "enough to say that the Act approaches the problem of cost spreading rationally; whether a broader [or narrower] cost-spreading scheme would have been wiser or more practical under the circumstances is not a question of constitutional dimension." *Id.* at 19.

B. Under the applicable standard of rationality, the funding provisions of the Coal Act—including in this case the imposition of premiums on operators that signed NBCWAs before 1978 but did not do so in 1978 or afterwards—meet the requirements of due process.[23]

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[23] All courts of appeals that have addressed the funding provisions of the Coal Act have upheld them as rational and consistent with due process. See Pet. App. A1-A23 (decision below); *Holland* v. *Keenan Trucking Co.*, 102 F.3d 736 (4th Cir. 1996); *Carbon Fuel Co.* v. *USX Corp.*, 100 F.3d 1124 (4th Cir. 1996); *Lindsey Coal Mining Co.* v. *Chater*, 90 F.3d 688 (3d Cir. 1996); *In re Blue Diamond Coal Co.*, 79 F.3d 516 (6th Cir. 1996), cert. denied, 117 S. Ct. 682 (1997); *Davon, Inc.* v. *Shalala*, 75 F.3d 1114 (7th Cir.), cert. denied, 117 S. Ct. 50 (1996); *In re Chateaugay Corp.*, 53 F.3d 478 (2d Cir.), cert. denied, 116 S. Ct. 298 (1995); *Barrick Gold Exploration, Inc.* v. *Hudson*, 47 F.3d 832 (6th Cir.), cert. denied, 116 S. Ct. 64 (1995); see also *Unity Real Estate Co.* v. *Hudson*, 977 F. Supp. 717 (W.D. Pa. 1997), appeal pending, No. 97-3234 (3d Cir.); *Mary Helen Coal Corp.* v. *Hudson*, 976 F. Supp. 366 (E.D. Va. 1997); *Holland* v. *High-Tech Collieries, Inc.*, 911 F. Supp. 1021 (N.D.W.Va. 1996).



1. Retroactive application of the Act need only be "supported by a legitimate legislative purpose furthered by rational means." *R.A. Gray*, 467 U.S. at 729. That there are legitimate legislative purposes to the Coal Act—protecting the health benefits of retired coal miners and their survivors and dependents, and resolving a crisis in the system of financing those benefits—can scarcely be open to dispute. Congress knew, based on the federal government's long experience in the coal industry from the federal takeover of the coal mines in the 1940s through the government's efforts to mediate the Pittston strike of the 1980s, that the funding shortfall in the 1950 and 1974 Trusts threatened to deprive thousands of retired miners and their dependents of their health benefits, and also threatened seriously to disrupt interstate commerce. See Coal Act § 19142(b), 106 Stat. 3037. Congress was also aware that retired miners' health care has long been a central issue in labor relations in the coal industry, and that a lasting, peaceful resolution of those labor relations required a definitive settlement of the issue of retirees' benefits, just as such a resolution was required in 1950 when the UMWA and the BCOA entered into the definitive postwar arrangements for miners' health benefits.

2. The means chosen by Congress to achieve the objectives of the Coal Act were rational. For a number of reasons, Congress was justified in concluding that part of the Coal Act's costs should be borne by operators who had signed NBCWAs before 1978.

First, Congress made the judgment, based on the conclusions of the Coal Commission and the evidence presented during the framing of the legislation, that miners who had worked for coal operators between 1950 and 1978 had legitimate expectations of lifetime health benefits for

themselves and their dependents—whether or not those expectations had been reduced to express contractual promises in the NBCWAs—and that it was therefore fair and reasonable to require those operators to make good on part of the cost of fulfilling those expectations. See pp. 9-12, *supra* (reviewing conclusion of Coal Commission and legislative evidence).[24] "Every signatory company, including [petitioner], participated in the creation and development of a multi-employer health benefit program that provided lifetime health benefits for retirees for almost fifty years." *Davon, Inc.* v. *Shalala*, 75 F.3d 1114, 1124 (7th Cir.), cert. denied, 117 S. Ct. 50 (1996).[25] Petitioner was "part of this tradition and can rationally be said to have contributed to a reasonable expectation of lifetime benefits." *Id.* at 1125; accord *In re Blue Diamond Coal*

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[24] See also *Templeton Coal Co.* v. *Shalala*, 882 F. Supp. 799, 825-826 (S.D. Ind. 1995) (discussing some of the evidence), aff'd *sub nom. Davon, Inc.* v. *Shalala*, 75 F.3d 1114 (7th Cir.), cert. denied, 117 S. Ct. 50 (1996); *United Mine Workers of America* v. *Nobel*, 720 F. Supp. 1169, 1178 (W.D. Pa. 1989) (noting "25-year history of lifetime benefits prior to 1974"), aff'd, 902 F.2d 1558 (3d Cir. 1990), cert. denied, 499 U.S. 904 (1991).

[25] As noted above (pp. 6-7, *supra*), the 1950 Trust, which was set up by the 1974 NBCWA after the enactment of ERISA, was established to provide benefits for miners who had *already* retired, and expressly guaranteed that "[a]ny pensioned miner covered in this Plan will retain his Health Services card until death, and upon his death his widow will retain a Health Services card until her death or remarriage." See *Chateaugay*, 53 F.3d at 482. The fact that the coal industry, in the 1974 agreement, collectively promised to provide lifetime benefits to miners who had already retired, whether or not those miners' employers were still mining coal or were even still in existence, strongly suggests that a firmly settled expectation had already arisen among coal operators by that time that the unionized sector of the bituminous coal industry was responsible for financing the health-care benefits of retired miners and their dependents.



*Co.*, 79 F.3d 516, 522 (6th Cir. 1996), cert. denied, 117 S. Ct. 682 (1997).

Second, petitioner, like other signatories to the NBCWA, provided service credits to its employees that counted toward their eligibility for pension and retirement health benefits. See *Blue Diamond*, 79 F.3d at 522-523; cf. *Concrete Pipe*, 508 U.S. at 637-639. Congress might well have concluded that those companies that then ceased coal mining operations before 1978 had, in effect, shifted the cost of their own retirees' health benefits to other companies that remained in business, signed the wage agreements in 1978 and afterwards, and assumed the burden of financing retired miners' benefits as part of the cost of a comprehensive solution to labor relations. See pp. 8-9, 12-13, *supra*. It accordingly was proper to require the pre-1978 signatories to contribute to a solution that applied to retired miners in the entire industry.

Third, there was ample evidence for Congress to conclude that any solution that rested only on contributions from signatories in 1978 and later would be inadequate. See pp. 10-11, *supra*. By the same token, Congress could reasonably conclude that an industry-wide tax on current coal production would unfairly require contributions from coal operators that never had employed any of the retired miners (or had any relationship with any operator that did), and therefore had nothing to do with the problem to be addressed. See p. 13, *supra*.

Finally, petitioner, like other operators, profited from the miners' labor[26] and concessions given in exchange for better health benefits. See *Carbon Fuel Co.* v. *USX Corp.*, 100 F.3d 1124, 1133 (4th Cir. 1996). They also bene-

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[26] See 138 Cong. Rec. S17,603 (daily ed. Oct. 8, 1992) (Sen. Wallop) (Act assigns financial responsibility to "those companies which employed the retirees in question and thereby benefitted from their services").

fited from the labor peace and industry-wide mobility of miners that were facilitated by the mechanism of portable service credits. Those credits were consistently honored by the funds both before and after petitioner left the coal industry.

3. Petitioner argues that Congress could not have rationally required it (and others like it who left the coal industry before 1978) to contribute because it made no express contractual commitment to finance miners' health benefits for life, and because it had closed its own books on its obligation to its employees before 1978. In essence, petitioner challenges the premise that it and similarly situated operators, either themselves or through the Trusts, implicitly created a legitimate expectation that lifetime benefits would be paid to those who worked in the mines before 1978. Petitioner emphasizes (Br. 19, 27-28) that the 1950 W&R Fund, to which it contributed before 1965, was not a defined benefit plan, and that benefits during the time of its contributions were revocable rather than vested. That argument misapprehends the "quite minimal" nature of judicial scrutiny under rational-basis review. See *National R.R. Passenger Corp.*, 470 U.S. at 472. The rationality of Congress's action "is not subject to courtroom factfinding" and need not be supported "by evidence or empirical data." *Beach Communications*, 508 U.S. at 315. Petitioner cannot prevail on its due process claim by offering to "prove," as a factual matter, that the assumptions underlying Congress's actions are incorrect, either generally or specifically as applied to petitioner. "[I]t is not the function of the courts to substitute their evaluation of legislative facts for that of the legislature." *Minnesota* v. *Clover Leaf Creamery Co.*, 449 U.S. 456, 470 (1981). "Since in view of the evidence before the legislature, the question clearly is at least debatable," Con-



gress's action must be sustained. See *id.* at 469 (internal quotation marks omitted).

Moreover, the Due Process Clause does not require Congress to adhere to the express terms of pre-existing private contracts, see *National R.R. Passenger Corp.*, 470 U.S. at 472 n.25; *R.A. Gray*, 467 U.S. at 726-727, and "legislation is not unlawful solely because it upsets otherwise settled expectations," *id.* at 729-730 (quoting *Turner Elkhorn*, 428 U.S. at 15-16); see also *Concrete Pipe*, 508 U.S. at 637, 646-648. It is sufficient that Congress concluded that pre-1978 signatories, by their actions and their participation in the system of financing benefits, had contributed to miners' expectation that they would receive health benefits for life, whether or not that expectation was reduced to contract.

Thus, in *National R.R. Passenger Corp.*, *supra*, the Court upheld a provision of the Rail Passenger Service Act, Pub. L. No. 91-518, 84 Stat. 1327, that required private railroads that transferred their common-carriage obligations to Amtrak to reimburse Amtrak for free and reduced-fare rail-travel privileges that Amtrak provided to the railroads' former employees and their dependents. The railroads argued in that case that their practice, before the creation of Amtrak, of giving their employees rail-travel passes was "a gratuitous undertaking, like providing a Christmas turkey," and that they had never expressly agreed to provide those passes into the indefinite future. See 470 U.S. at 474. This Court nonetheless readily concluded that Congress had acted rationally in requiring Amtrak to honor "the expectations of the railroads' past and present employees and their dependents" to continued rail-travel privileges, and in requiring the private railroads to reimburse Amtrak for the cost of those privileges, *id.* at 477. The Court observed that the scheme was permissible "both because the railroads,

rather than the taxpayers, were responsible for the creation of the moral obligation to the railroad employees and retirees, and because the railroads benefited from labor peace and continued employee morale." *Ibid.*

Whether another system of financing retirees' health benefits would have been more efficacious or fair was for Congress to decide. Indeed, Congress considered the financing options at hand closely, and came to the conclusion that the funding mechanism of the Coal Act was preferable to other approaches. Congress might have financed benefits through a tax on current coal production, but that option was subject to objection in Congress on the ground that it compelled a subsidy of unionized Eastern coal operators that had signed the various NBCWAs by other coal operators that never had anything to do with the NBCWAs. See p. 13, *supra*. Congress might have restricted funding obligations to signatories of the then-current NBCWA, or NBCWAs dating only from 1978 onward; but it was doubtful that those approaches would have yielded sufficient funds, and all of them were subject to the objection that they would have forced later signatories to continue paying for retired miners they had never employed, but had been employed by operators that had withdrawn from the NBCWA before 1978 and shifted their costs to others. Congress instead adopted a tiered financing system that placed responsibility, wherever possible, on those current and former signatories that it deemed most responsible, *i.e.*, former employers of current beneficiaries. That approach was entirely rational.[27]

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[27] Petitioner relies (Br. 25-26) on *Railroad Retirement Board* v. *Alton Railroad*, 295 U.S. 330 (1935), but as the court of appeals noted (Pet. App. A16 n.6), that decision, even if it still retains vitality, is readily distinguishable from the case at bar. In pertinent aspect, *Alton* invalidated a federal statute that compelled railroads to finance retirement pensions of employees who had worked for them before the effective date of the law. There was no suggestion in that case, however, that the railroads before the Court had expressly or implicitly created a legitimate expectation that their already-retired employees would receive pensions upon leaving service, or that other railroads were being compelled to pay for pensions of the litigants' retirees.



C. Petitioner contends (Br. 21-22, 26-29) that, even if the Coal Act's funding provisions are valid on their face, they are unconstitutional as applied to petitioner. It is difficult to see, however, how petitioner's situation presents an "exceptional case" (Br. 21) that excuses it—alone among the signatory operators that withdrew from the NBCWA framework before 1978—from paying premiums under the 1992 Act. Congress determined that those companies that had signed a NBCWA between 1950 and 1978 and that were still in business should contribute to their own former employees' benefits, if and only if no operator that signed a NBCWA in 1978 or later and employed those miners (or a "related person") was still in existence. Petitioner falls into that class of companies.

Petitioner submits (Br. 29) that it should be excused from its financial obligations under the Coal Act because it transferred its coal operations to a subsidiary, EACC, "which continued to operate the same mine (and others), and which made all contributions to the plans that [petitioner] would have made had it remained in the mining business." Far from supporting its position, however, the fact that petitioner transferred its coal mining operations to a wholly owned subsidiary—which continued to operate until petitioner sold it in 1987—strongly reinforces the constitutionality of applying the Coal Act to petitioner. That arrangement demonstrates that petitioner retained a substantial, ongoing nexus to the coal industry and its health benefits problems until relatively soon before the Coal Act was passed. In fact, petitioner profited, through $100 million in distributed dividends, from EACC's partici-

pation in the coal industry well after 1965—including EACC's ratification of the NBCWAs through 1987 and EACC's enjoyment of the labor peace that came with those contracts. See Pet. Br. 6 n.13, 7. Petitioner is therefore ill situated to claim that it received no benefit from the post-1965 NBCWAs and may not be called upon to shoulder some of the costs facing the industry now.

Although petitioner argues that it contracted with EACC to assume future obligations to petitioner's retirees, Br. 34, petitioner remains free to seek indemnification from EACC under 26 U.S.C. 9706(f)(6), an option that petitioner is pursuing in this case.[28] The Due Process Clause does not bar Congress from placing liability in the first instance on petitioner and the other operators that actually employed the retired miners, and leaving it to those operators to recover from any third party that they believe has assumed that liability as a matter of private contract. Petitioner's contention that it would have structured its transactions differently, had it foreseen the terms of the Coal Act, is likewise of no moment: as noted above, legislation does not violate due process simply because it upsets settled expectations regarding past commercial transactions. *R.A. Gray*, 467 U.S. at 729-730.

More fundamentally, petitioner's effort to distinguish its situation from that of other pre-1978 signatories on the basis of its own corporate organization again reveals a misunderstanding of the rational-basis standard. If the lines drawn by a regulatory scheme are rational as a general matter, a party subject to that scheme does not establish a due process violation by showing that the

[28] But see *Carbon Fuel Co.*, 100 F.3d at 1134-1135 (concluding that Coal Act abrogates pre-existing private contracts allocating liability for health-care benefits to retired miners covered by the Act). We disagree with that reading of the Act by the Fourth Circuit in *Carbon Fuel*.



assumptions underlying the law fail in the circumstances of a particular case. "That there may be exceptions to the assumption on which the regulation is premised is irrelevant, * * * so long as the classification (the regulation) in the run of cases furthers its purpose." *Steffan* v. *Perry*, 41 F.3d 677, 686 (D.C. Cir. 1994). "[T]he question raised is not whether a statutory provision precisely filters out those, and only those, who are in the factual position which * * * caused congressional concern, or whether it filters out more members of the class than nonmembers." *Weinberger* v. *Salfi*, 422 U.S. 749, 777 (1975). As the Third Circuit stated in rejecting a similar argument, "[j]ust because a measure is over- or under-inclusive will not render it irrational. * * * A fifteen-year-old cannot successfully challenge a minimum age requirement of sixteen for driving on the basis that *she* would be a great driver even though most individuals of that age would not." *Lindsey Coal Mining Co.* v. *Chater*, 90 F.3d 688, 694-695 (3d Cir. 1996).[29]

At bottom, petitioner argues that, when Congress decided to include pre-1978 NBCWA signatories in the funding mechanism, it drew the line at the wrong place. But that kind of line-drawing exercise is a quintessentially legislative task, and "there is no need for mathematical precision in the fit between [the] justification and means" chosen by the legislature. *Concrete Pipe*, 508

[29] Although petitioner maintains that the relevant question is whether "Congress could rationally have concluded that *each* of the parties included in the class contributed to the problem addressed by the legislation" (Br. 25 (emphasis added)), it is doubtful that any statute could survive such a stringent standard. "[C]ourts are compelled under rational-basis review to accept a legislature's generalizations even when there is an imperfect fit between means and ends. A classification does not fail because it is not made with mathematical nicety or because in practice it results in some inequality." *Heller* v. *Doe*, 509 U.S. at 321 (internal quotation marks omitted).

U.S. at 639. Congress had a rational basis for regarding all NBCWA signatories as responsible, in some measure, for the ultimate financial instability of the industry's retiree health care system. The Coal Act is therefore consistent with due process.

## II. THE COAL ACT DOES NOT EFFECT AN UNCOMPENSATED TAKING OF PETITIONER'S PROPERTY

A. Given that the Coal Act does not violate due process, it would be "surprising indeed to discover" that the Act effected an uncompensated taking of petitioner's property in violation of the Fifth Amendment. See *Concrete Pipe*, 508 U.S. at 641; *Connolly*, 475 U.S. at 223.[30] Recognizing

[30] There is a threshold question whether the district court properly entertained petitioner's request for an injunction, even if the Coal Act did effect a taking. A district court may not enjoin a taking of private property for public use by the federal government if the Court of Federal Claims has authority to award compensation. *Rose Acre Farms, Inc.* v. *Madigan*, 956 F.2d 670, 673 (7th Cir.), cert. denied, 506 U.S. 820 (1992); see *Preseault* v. *Interstate Commerce Comm'n*, 494 U.S. 1, 11 (1990); *Williamson County Regional Planning Comm'n* v. *Hamilton Bank*, 473 U.S. 172, 194-195 (1985). Nonetheless, this Court has decided the merits of claims brought in district court for equitable relief from a taking, in contexts similar to this one, involving a statute requiring a private party to pay money or adjusting the interests of parties outside the government. See *Concrete Pipe*, 508 U.S. at 641-647; *Connolly*, 475 U.S. at 221-228; see also *Babbitt* v. *Youpee*, 117 S. Ct. 727, 732 (1997); *Hodel* v. *Irving*, 481 U.S. 704, 712-718 (1987). This Court apparently concluded in the latter two cases that such equitable relief was available, because its decisions that the statutory provisions at issue violated the Fifth Amendment necessarily rested on the premise that just compensation was not available. See *Williamson County*, 473 U.S. at 194-195; U.S. Br. (at 13-14 n.5) in *Youpee*, No. 95-1595; U.S. Br. (at 25 n.16) in *Irving*, No. 85-637.

In our view, when a court decides whether an action lies in district court for equitable relief to prevent the operation of a federal statute that allegedly amounts to a taking, the court should decide whether, in



the difficulty of making such a claim, petitioner first attempts (Br. 37-43) to recast the Coal Act as a permanent appropriation of its assets, similar to the government's physical invasion of private land or its destruction of all economically beneficial use of such property. That argument, however, cannot be sustained in light of this Court's decisions in *Concrete Pipe* and *Connolly*. In *Concrete Pipe*, the Court "reject[ed] Concrete Pipe's contention that the appropriate analytical framework is the one employed" in real-property cases. 508 U.S. at 643. In *Connolly*, the Court rejected the similar argument that statutory liability to a private party is always an uncompensated taking, even though the Court acknowledged t hat an employer subject to the liability at issue there "is permanently deprived of those assets necessary to satisfy its statutory obligation." 475 U.S. at 222. See also *Sperry*, 493 U.S. at 62 n.9 (rejecting argument that user fee was akin to a permanent physical appropriation of property). Thus, contrary to petitioner's contention, the

light of the statute's language, context, and history, Congress intended to pay compensation if the governmental action could be implemented only if accompanied by compensation, or whether Congress intended rather to have the legislation enjoined if it were found to constitute a taking. Cf. *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. 986, 1017-1019 (1984). In this case, neither the text nor the legislative history of the Coal Act indicates whether Congress meant to allow suits by the coal companies for compensation in the Court of Federal Claims under the Tucker Act. But because the Coal Act regulates a private relationship among the miners, their union, and the coal companies, it is most unlikely that Congress intended that the United States Treasury would be liable to the coal companies if the contributions they challenge here were deemed to be a taking. It is far more likely that, were the Coal Act found to result in a taking, Congress would have wanted the Act to be enjoined as applied to the challenger, and then to reserve to itself the opportunity to determine legislatively what course of action to adopt. Thus, the district court properly entertained petitioner's suit for equitable relief on the taking claim.

proper analytical framework is not that set forth in cases like *Loretto* v. *Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), and its progeny, governing invasions and appropriations of physical property, but rather the well settled framework for regulatory takings applied by the Court in *Concrete Pipe* and *Connolly*.

There is also no merit to petitioner's suggestion (Br. 37-43) that an economic regulation like the one at issue here must be deemed a taking in the absence of a direct causal connection between the problem addressed and property burdened. Petitioner appears to derive that standard (Br. 38-39) from *Dolan* v. *City of Tigard*, 512 U.S. 374 (1994), and *Nollan* v. *California Coastal Commission*, 483 U.S. 825 (1987). Those cases, however, involved uses of real property—specifically, regulations that impaired private landowners' right to exclude the general public from their land. In *Dolan*, for example, the crucial fact was that "the conditions imposed were not simply a limitation on the use [Dolan] might make of her own parcel, but a requirement that she deed portions of the property to the city." 512 U.S. at 385; cf. *Nollan*, 483 U.S. at 831, 834. For that reason, the Court declined to adopt the framework applicable to regulations of private land *use*, and instead viewed the case as more akin to one involving appropriation of land. The Court then applied its standard of an "essential nexus" and "reasonable relationship" (or "rough proportionality"), which it derived from the doctrine of unconstitutional conditions (the condition in that case being the surrender of land to the government). See *Dolan*, 512 U.S. at 385. Neither case had occasion to apply or question the regulatory-taking test applied in *Connolly* and *Concrete Pipe*.

B. This Court has long emphasized that "[g]overnment hardly could go on" if the financial disadvantage caused by legitimate regulation of economic activity were routinely



or even frequently deemed to be a taking of private property requiring compensation. See *Keystone Bituminous Coal Ass'n* v. *DeBenedictis*, 480 U.S. 470, 472 (1987); *Pennsylvania Coal Co.* v. *Mahon*, 260 U.S. 393, 413 (1922); *id.* at 422 (Brandeis, J., dissenting); see also *Mugler* v. *Kansas*, 123 U.S. 623, 668-669 (1887). "[G]overnment regulation—by definition—involves the adjustment of rights for the public good. Often this adjustment curtails some potential for the use or economic exploitation of private property. To require compensation in all such circumstances would effectively compel the government to regulate by *purchase*." *Andrus* v. *Allard*, 444 U.S. 51, 65 (1979). "The Takings Clause, therefore, preserves governmental power to regulate, subject only to the dictates of justice and fairness." *Ibid.* (internal quotation marks omitted).

This Court has identified "three factors with particular significance" for assessing whether a governmental regulation effects an uncompensated taking of property. See *Concrete Pipe*, 508 U.S. at 643. The Court considers (1) the character of the governmental action; (2) the economic impact of the regulation on the claimant; and (3) the extent to which the regulatory action interferes with reasonable investment-backed expectations. *Id.* at 644-645; *Connolly*, 475 U.S. at 225. Those factors all point to the conclusion that the Coal Act does not effect an uncompensated taking of petitioner's property.

1. First, as to the character of the governmental action, it is highly significant that the Coal Act does not appropriate any assets to the government's own use, but rather distributes liability among private parties. See *Concrete Pipe*, 508 U.S. at 644-645 (similar); see also *Penn Central Transp. Co.* v. *City of New York*, 438 U.S. 104, 124 (1978) (noting that "[a] 'taking' may more readily be found when the interference with property can be characterized

as a physical invasion by government than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good") (citation omitted). The Combined Fund was established by Congress as a private entity to provide adequate financing for the health benefits of miners (who, of course, are themselves private persons), and thereby to secure stability in interstate commerce. Although the Coal Act itself is undoubtedly government action, the liability that it establishes runs from one private party to another. Thus, the Act should be viewed as one of the innumerable situations in which, "[i]n the course of regulating commercial and other human affairs, Congress routinely creates burdens for some that directly benefit others. For example, Congress may set minimum wages, control prices, or create causes of action that did not previously exist. Given the propriety of the governmental power to regulate, it cannot be said that the Taking Clause is violated whenever legislation requires one person to use his or her assets for the benefit of another." *Connolly*, 475 U.S. at 223.

Furthermore, the Coal Act is intended to ensure that labor disputes in a nationally important industry do not disrupt interstate commerce. The legislation's purpose of promoting stability is of considerable significance in the takings analysis, for this Court has been reluctant to find that legitimate regulation constitutes a taking unless the regulation, in practical effect, destroys all economically beneficial uses of real property—a result that is plainly not present here. Cf. *Keystone*, 480 U.S. at 488-489; *Lucas* v. *South Carolina Coastal Council*, 505 U.S. 1003, 1018-1019 (1992). The Coal Act's immediate purpose, in fact, is similar to that advanced by the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), Pub. L. No. 96-364, 94 Stat. 1208, examined by the Court in *Concrete Pipe*



and *Connolly*: securing the financial stability of a complex multi-employer benefit plan.

Petitioner seeks to distinguish the Coal Act from the MPPAA by arguing that the MPPAA imposed liability only on those employers that withdrew from the pension plan and thereby caused the harm that the statute sought to correct. As noted earlier, however, this Court's withdrawal-liability cases show that there is no basis for importing a causation requirement into the taking analysis applicable to this case. See pp. 38-40, *supra*. In any event, petitioner's insistence (Br. 42) that it played no role in the development of the problems addressed by the Coal Act is simply incorrect. When petitioner departed the coal industry, it left behind employees and retired employees who had an expectation of lifetime health benefits and portable service credits countable towards eligibility for those benefits, cf. *Concrete Pipe*, 508 U.S. at 638, and it effectively shifted the burden of financing those benefits onto the remaining signatories to the NBCWAs. The fact that such benefits were not legally vested until after petitioner's withdrawal from the NBCWA system is of little practical importance in light of the miners' reasonable expectation, based on almost half a century of past experience, that that "pay-as-you-go" plan would continue to fund health benefits into the future.

2. As for the economic impact of the Coal Act on petitioner, that factor at a minimum requires petitioner to show that the burdens placed on it under the Act are wholly disproportionate to the basis for Congress's conclusion that petitioner should be liable for its retired miners' benefits. See *Connolly*, 475 U.S. at 226 (rejecting argument that withdrawal liability actually imposed "will always be out of proportion to its experience with the plan"); *Concrete Pipe*, 508 U.S. at 645 (reaching similar conclusion, even though Concrete Pipe was required to

pay out almost half of its shareholder equity to meet its obligations under the MPPAA). Petitioner argues (Br. 44) that proportionality is absent here because it neither promised lifetime health benefits for miners nor contributed to the funding problems that beset the Trusts. But as we have explained above, Congress reasonably concluded that pre-1978 employers were partly responsible for retired miners' expectation of continued benefits and for the financial crisis in the Trusts, and the basis for that judgment is entitled to deference. Cf. *Keystone*, 480 U.S. at 487 n.16 (noting that courts have no "license to judge the effectiveness of legislation" or to reject regulation because it is overinclusive). Petitioner's contentions, moreover, ignore the real, practical consequences of its participation in and exit from the benefit Trusts, which left petitioner's former employees "orphaned" with their benefits to be funded by the remaining signatory operators.

In fact, the Coal Act employs a carefully calibrated mechanism for assigning individual miners to those financially responsible for them. Under the statutory formula, petitioner's funding obligations are directly tied to its past employment of miners who are now covered by the Combined Fund. By "mooring a given company's funding obligations to a legitimate measure of its prior benefit from the UMWA health care system, the Coal Act rationally apportions future financial responsibility according to past participation." *Chateaugay*, 53 F.2d at 494. Under the Coal Act, moreover, the Commissioner of Social Security does not assign beneficiaries to a pre-1978 signatory like petitioner unless *no* signatory operator that employed such a miner and signed the 1978 or a subsequent NBCWA (or "related person") remains in business. Thus, the Coal Act places primary responsibility for funding the Combined Fund benefits on operators that remained in the



NBCWA system in 1978 and afterwards, and their related persons; it requires petitioner to pay premiums to the Combined Fund only because there is no such operator or related person in existence that would be responsible for the benefits of some of petitioners' retirees. And the Coal Act also recognizes that, notwithstanding the Commissioner's decision to assign those miners to petitioner, petitioner may seek contribution from another entity that it believes is more responsible, as a matter of private contractual arrangement, for paying those premiums, see 26 U.S.C 9706(f)(6), an option that petitioner is pursuing in this case. Petitioner therefore has not shown that its premium obligation to the Combined Fund under the Coal Act is "out of proportion to its experience with the plan," *Concrete Pipe*, 508 U.S. at 645 (quoting *Connolly*, 475 U.S. at 226), since it employed the retired miners who expected continued health-care benefits from the Trusts.

Petitioner urges (Br. 21, 44) that there is no proportionality between the modest benefits that petitioner's contributions funded in the 1950s and 1960s, and the "more expansive" benefits that beneficiaries now receive. The Just Compensation Clause, however, does not require that the benefits funded or the premiums levied mirror in every respect those at the time petitioner was a NBCWA signatory; the Constitution requires only that the present funding obligation be apportioned according to some rational measure. Cf. *Keystone*, 480 U.S. at 491 n.21 (noting that the Clause "has never been read to require the . . . courts to calculate whether a specific individual has suffered burdens . . . in excess of the benefits received" in determining whether a "taking" has occurred). The Coal Act's linkage of funding responsibilities to past employment with the signatory readily satisfies such a standard and does not impose a financial burden on petitioner that is constitutionally disproportionate to the

basis for the imposition of its premium liability to the Combined Fund.[31]

3. Petitioner argues finally that the Coal Act unreasonably interferes with its investment-backed expectations, which, it contends, were reasonably based on the limited requirements of the NBCWAs to which petitioner was a party (Br. 47) and its contractual arrangement with EACC (Br. 46, 49). That argument also provides no basis for finding a "taking" here.

First, petitioner's reasonable expectations cannot be confined to the terms of its contracts, for, as we noted earlier, contractual terms do not delimit Congress's authority to legislate. See *Concrete Pipe*, 475 U.S. at 224. The past, extensive history of federal involvement in the coal industry provides a more reasonable and relevant guidepost. As early as 1946, when the government nationalized the coal mines, it was clear both that the stability of the coal industry demanded adequate employee health and welfare benefits, and that the federal government was prepared to intervene to ensure the availability of those benefits. The first multi-employer welfare and retirement fund for miners was created "in the White House in a contract between the federal government and the UMWA," J.A. 236a, and was managed by three trustees, one of whom was appointed by the federal government, J.A. 262a-263a. The federal government also undertook the survey of coal miners' health-care needs that guided the multi-employer trusts thereafter in their provision of benefits. J.A. 265a-

[31] Amici Unity Real Estate Company, *et al.*, argue (Br. 18-19) that the economic impact of the Act on them is "enormous" because initial premium assessments on the amici exceed their assets. There has been no argument in this case, however, that premium assessments pose a similar threat to petitioner, and so the condition of amici is irrelevant to this Court's fact-specific inquiry as to whether petitioner's property has been taken.



266a. The federal government's involvement in maintaining the health-care delivery system for retired miners has remained extensive. See J.A. 265a-274a.

In light of that extensive history of federal involvement —as well as the comprehensive regulation of multi-employer welfare and pension plans generally through the Labor-Management Relations Act of 1947, 29 U.S.C. 141 *et seq.*, and the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.*,—it was foreseeable that Congress might again impose additional obligations on coal operators to preserve labor peace and to protect the integrity of miners' benefits. "Those who do business in the regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end." *Connolly*, 475 U.S. at 227 (internal quotation marks omitted).[32]

Second, petitioner's insistence (Br. 43, 48-49 & n.57) that it expected that any future liabilities would be borne by EACC as a result of its corporate reorganization, and that it would have restructured its transactions had it known otherwise, is wide of the mark. Although petitioner claims to have assigned all its liabilities to EACC, it of course expected to (and did) receive dividends and capital

[32] Amicus Washington Legal Foundation argues (Br. 12) that "[t]he general possibility that Congress might at some point revise the means of funding coal retirees' health benefits is a far cry from the specific expectation that Congress would impose" funding obligations on petitioner after it had left the coal industry. None of this Court's precedents under the Just Compensation Clause, however, requires such a degree of predictive foresight for legislation to be sustained. And although petitioner cites *United States* v. *Pewee Coal Co.*, 341 U.S. 114 (1951), to argue that past federal intervention in the coal industry has resulted in successful takings claims (Br. 48 n.56), that case involved a five-month government takeover of coal mines to avert a nationwide strike during World War II, which cannot credibly be compared with the monetary premiums assessed under the Coal Act.

gains based on EACC's performance in the coal industry after the reorganization. Thus, one cannot exclude, from petitioner's "reasonable expectations," its anticipation that it would profit from its subsidiary's coal mining operations, which in turn depended crucially on a settlement of retired coal miners' health benefits through the multi-employer system of the NBCWA. In short, petitioner reasonably expected to benefit from the NBCWA system even after it moved its coal-mining assets to its subsidiary, and that reasonable expectation defeats petitioner's contention that its benefits from the multi-employer benefit system ended in 1965. And to the extent that petitioner contracted for EACC or Peabody to meet its future obligations to its retirees, petitioner can enforce the terms of those contracts. See 26 U.S.C. 9706(f)(6).

In the end, the question for the Court is whether Congress has reasonably concluded that health-benefit premiums under the Coal Act should be the responsibility of those who participated in the multi-employer benefit system and employed the miners who will receive health care benefits from the Combined Fund, or whether those premiums are "public burdens which, in all fairness and justice, should be borne by the public as a whole." *Connolly*, 475 U.S. at 227 (internal quotation marks omitted). The Coal Act places the obligation to fund retiree benefits on the coal operators who had an established employment relationship with miner beneficiaries and who benefited from the miners' expectation that such benefits would be paid. Because Congress may properly conclude that that obligation may be borne by the participants in private industry who employed the miners rather than the public at large, the Coal Act does not cause an unconstitutional taking of petitioner's property.[33]

[33] Amicus Pittston Coal Co. urges (Br. 9) that, if this Court were to invalidate part of the financing system for the Coal Act, the Court should invalidate the Act in its entirety. Even if we assume *arguendo* that this Court might find a constitutional defect in the Act, there would be no occasion in this case to decide the issue of severability. Petitioner has not suggested that it would be affected by the remaining provisions. Cf. *Printz* v. *United States*, 117 S. Ct. 2365, 2384 (1997). Nor is any question of severability "fairly included" within the questions presented by the certiorari petition, which refer only to petitioner's particular experience. See Pet. i; Sup. Ct. 14.1(a).



## CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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